

Hearing Date and Time: August 7, 2011 at 11:00 a.m. (prevailing Eastern Time)

McCARTHY FINGAR LLP

Attorneys at Law

11 Martine Avenue, 12th Floor
White Plains, NY 10606
914 946-3700

Robert H. Rosh, Esq.(RR6101)
Attorneys for Angel Fernandez, individually and as
Administrator of the estate of Geralyn A. Schultz, deceased

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK



-----X

In re:

Chapter 11

SAINT VINCENTS CATHOLIC MEDICAL CENTERS
OF NEW YORK et. al.,

Case No. 10-11963 (CGM)

Jointly Administered

Debtors.

-----X

**RESPONSE OF ANGEL FERNANDEZ BY COUNSEL TO THE SEVENTH
OMNIBUS OBJECTION OF THE DEBTORS AND DEBTORS IN POSSESSION
TO CERTAIN PENSION PLAN CLAIMS**

Angel Luis Fernandez, by counsel, as and for his Response to the Seventh Omnibus Objections of the Debtors and Debtors in Possession to Certain Pension Plan Claims (the “Seventh Omnibus Objections”), states as follows:

1. As shown by the proof of claim filed herein by Angel Luis Fernandez (hereinafter, “Mr. Fernandez”), in his individual capacity identified as Claim Number 2550 (“Proof of Claim Number 2550”), Mr. Fernandez’s claim against the debtor, Saint Vincent’s Catholic Medical Centers of New York (hereinafter, the “Debtor”), arises under: (a) a tax deferred annuity plan

formed under Section 403(b) of the Internal Revenue Code, 26 U.S.C. §403(b) (the “TDA Plan”) and (b) the Saint Vincent Catholic Medical Centers’ Retirement Plan (the “Retirement Plan”).

The TDA Plan

2. Mr. Fernandez’s claim under the TDA Plan is based upon the Debtor’s refusal to recognize Mr. Fernandez’s rights under the plan, and to pay benefits to him, as the surviving spouse of a participant (his now deceased wife, Geralyn A. Schultz) with vested rights in the TDA Plan, in violation of the Employee Retirement Income Security Action of 1974 (“ERISA”), 29 U.S.C §§1001, *et seq.* With respect to the TDA Plan, Mr. Fernandez also claims damages arising from an improper loan made thereunder without Mr. Fernandez’s consent or knowledge and, *inter alia*, the Debtor’s failure to produce plan documents to Mr. Fernandez in violation of 29 U.S.C. §1132(c)(1)(B).

3. As set forth in Proof of Claim Number 2550, as of the date and filing of the bankruptcy petition herein on April 14, 2010, Mr. Fernandez’s individual claimⁱ against the Debtor was \$52,404.53, composed of as follows:

1. Unpaid principal amount of annuity due and payable to Creditor.....	\$28,245.13
2. Interest on the unpaid principal from 3/31/10 to 4/14/10, calculated at the statutory rate of 9% per annum on a 360 day basis.....	\$98.86
3. Legal fees incurred by Creditor as of April 14, 2010.....	\$1,775.00
4. Claim for failure to provide plan documents in violation of 29 U.S.C. §1132(c)(1)(B) in the amount of \$100 per day between January 6, 2010 and April 14, 2010 (99 days x \$100).....	\$9,900.00
5. Claim arising from loan made from the TDA Plan to Decedent without Creditor’s consent (less \$39.11 loan refund by Mutual of America to the Estate of Geralyn Schultz, Exhibit “J” hereto).....	\$12,071.68

6. Interest on the unpaid loan from 01/01/10 to 4/14/10, calculated at the statutory rate of 9% per annum on a 360 day basis.....	\$313.86
TOTAL.....	\$52,404.53

The Retirement Plan

4. Mr. Fernandez's claim under the Retirement Plan is evidenced by, but not limited to, Debtor's letter of December 10, 2009 addressed to Mr. Fernandez (Ex. "L" to Proof of Claim Number 2550), stating that Mr. Fernandez's monthly pension will begin on December 1, 2022 in the amount of \$339.30 per month or, alternatively, depending on Mr. Fernandez's election, on December 1, 2032, in the monthly amount of \$829.78, for Mr. Fernandez's lifetime. (seeSummary descriptions of the Retirement Plan are annexed as Exhibit "M" to Proof of Claim Number 2550.) Mr. Fernandez has requested, but has not received from Debtor, a full copy of the Retirement Plan and other pertinent plan documents.

5. In their Seventh Omnibus Objections, Debtors' counsel represents that a purported stipulation was entered into at some unspecified point in time by and between the Debtors and the Pension Benefit Guaranty Corporation ("PBGC"), pursuant to which the Retirement Plan was involuntarily terminated, and PBGC assumed the responsibilities for administering and issuing payments under the Pension Plan. Mr. Fernandez' claim, however, is not limited to and exclusively based upon the Retirement Plan. To the contrary, as discussed in and shown by Proof of Claim Number 2550, Mr. Fernandez's claim against the Debtor is also based upon TDA Plan, which is neither discussed in nor otherwise, a subject of the Seventh Omnibus Objections.

6. As to Mr. Fernandez's claim under the Retirement Plan, we have requested from Debtors' counsel, but have yet to be provided with, a copy of the stipulation which purportedly terminated the plan. Moreover, and aside from our unanswered request to Debtors' counsel, we have diligently attempted but have been unable to obtain a copy of the purported stipulation, and have therefore been unable to confirm the accuracy of the representations by Debtors' counsel in the Seventh Omnibus Objections. The objections should consequently be overturned as evidentiary incompetent as to Proof of Claim 2550.

7. Any reply to the response should be served upon the following:

Robert H. Rosh, Esq.
McCarthy Fingar LLP
11 Martine Avenue, Fl. 12
White Plains, New York 10606
Tel. No. (914) 946-3700
Fax No. (914) 946-0134
e-mail: rrosh@mccarthyfingar.com

and

Angel Luis Fernandez
117-24 142nd Street
Jamaica, NY 11436
Tel. No. (917) 825-8816
e-mail: angel.l.ferandez@gmail.com

WHEREFORE, based on the foregoing, I respectfully request that the Seventh Omnibus

Objections be overruled in all respects as to Proof of Claim 2550.

Dated: July 13, 2011
White Plains, New York

McCARTHY FINGAR LLP

By: 

Robert H. Rosh, Esq. (RR6101)
Attorneys for Creditor
ANGEL LUIS FERNANDEZ
11 Martine Avenue, Fl. 12
White Plains, NY 10606-1934
(914) 946-3700

ⁱ Mr. Fernandez also filed a proof of claim against the Debtor in Mr. Fernandez's capacity as the personal representative (administrator) of the estate of his deceased wife, Geralyn A. Schultz, arising from an unauthorized loan from the TDA Plan, and consequential tax liability incurred by the Estate, and the Debtor's failure to produce plan documents in violation of 29 U.S.C. §1132(c)(1)(B). A copy of that proof of claim (which was not included within the list of claims set forth in Debtors and Debtor-in-Possession's Seventh Omnibus Objection to Certain Pension Plan Claims, is attached hereto as Exhibit "A."